
SECTION VII SUMMARY

This section summarizes the major findings and recommendations from our study. It includes a complete list of our 39 improvement recommendations that are presented in several sections of this report. It also discusses in greater detail a few key points from our findings, points that we believe are critical to improving the system of justice in Maricopa County.

INTRODUCTION

This process improvement study of the Maricopa County Public Defender's Office began partly from a major problem in the criminal justice system and partly from an opportunity. The problem was the backlog of criminal cases in the courts and the difficulty the justice system was having in reducing that backlog and disposing of cases in a more timely manner. This problem was not new; indeed, it had existed for many years. What was new was the Arizona Supreme Court's mandate that the Maricopa County Superior Court adhere more closely to the case processing time frames defined in Rule 8.

The major stakeholders in the justice system realized that to address this problem successfully, they needed the cooperation from and the support of all the agencies in the system. They also, however, perceived that the MCPD was a major obstacle in effecting improvements in case processing time. They viewed the Supreme Court's mandate as an opportunity to conduct a study of the MCPD and identify areas for possible improvement. The Public Defender was fully supportive of this study. He also viewed it as an opportunity: an opportunity to address some of the negative criticism directed at his office and an opportunity to learn what the office could be doing better based upon best practices used in other public defender offices nationally.

The Maricopa County criminal justice system and individual agencies in that system have been the subject of several previous studies. For example, in 1993 an outside consultant group conducted a study of the MCPD, and in 1998 the National Institute of Corrections sponsored an evaluation of the County's criminal justice system. We reviewed these studies as part of our own assessment and found many of the

recommendations from those studies as relevant today as they were then. Thus, some of our improvement ideas for the MCPD and for the justice system generally are not new. In fact, we believe that the system would be healthier today if it had made more effective use of the conclusions and recommendations in past consultant reports.

Regardless of this opinion, the history of past studies encouraged us to take a much more collaborative approach to our assessment than we believed other consultant groups had done in the past. Thus, we worked very closely with the MCPD in every stage of our assessment and provided continual feedback about our observations, findings and ideas for improvement. The Public Defender has been very receptive and responsive to these ideas. This is illustrated by the fact that he has implemented several of our interim recommendations. Among others, for example, he implemented a modified horizontal representation approach in May 2000 and has begun to reorganize his office along the lines of our recommendations. Also, at the conclusion of this study, he has committed to conducting a management retreat to examine our recommendations, establish priority areas for attention, and implement the most important of the improvement ideas.

KEY FINDINGS

The complete list of improvement recommendations is displayed in Exhibit VII-1 at the end of this section. It is obvious from even a brief review of the exhibit that we have not limited our recommendations to the MCPD, but have included recommendations for the criminal justice system generally. This reflects the fact that the MCPD does not act alone. It is part of a larger, interdependent justice system composed of multiple agencies and programs. As a result, its planning and improvement efforts affect and are affected by all the other organizations in the system. Understanding and appreciating this point are critical to the success of any improvement efforts. If the system cannot work collaboratively, it will not, in our opinion, achieve the success it hopes to achieve.

We believe that one reason past efforts at reducing delay in case processing have been unsuccessful has been the inability of the system's stakeholders to work together. We realize that the system has built-in tensions among stakeholders and believe that tension is necessary and healthy. Nevertheless, we also believe that tension does not need to be destructive to the goal of delivering justice fairly and in a timely manner.

Rather than discuss all the recommendations, below we discuss a few of the major issues we uncovered as part of our study and present the recommendations dealing with those issues.

Public Defender Autonomy

The key areas we believe need review to ensure autonomy of the indigent defense function include (1) the absence of a fixed term of office for the public defender, (2) the lack of an external process to select the public defender, (3) the MCPD's lack of control over its budget, and (4) the fragmentation of the defender function. We recommend the following to deal with this issue:

- **Maricopa County should create a structure and process to assure appropriate levels of accountability and autonomy for indigent defense (Recommendation 28).**

As part of this process, we encourage Maricopa County to establish an autonomous Board of Trustees for indigent defense. We believe that one of the Board's responsibilities should be to recruit the heads of the defender departments. We further believe the public defender should have a fixed term of office.

Measuring Caseload and Workload

One recommendation from a 1993 study of the MCPD was that the MCPD and other criminal justice agencies in Maricopa County needed to develop a uniform method of case counting so that caseload comparisons could be made across agencies in a fair and reliable manner. This problem still exists today. Thus, there is no uniformity among criminal justice system agencies in Maricopa County about (1) how a case is defined, (2) when the life of a case begins and ends, and (3) how much work each case involves. For example, unlike other agencies, the MCPD does not count cases until after arraignment, even though its attorneys represent clients at the Justice Courts. In effect, the MCPD is undercounting its caseload and workload.

To address this issue, we make the following recommendations:

- **Maricopa County needs to develop a uniform definition of a “case” and a case counting and weighting method applicable beyond the MCPD to at least other indigent representation agencies and preferably to the entire criminal justice system (Recommendation 3).**
- **Maricopa County should develop a uniform, system-wide funding model for addressing caseload and/or workload increases (Recommendation 4).**
- **The MCPD should conduct a case weighting study to establish MCPD caseload standards that reflect actual workload and the work required to meet minimum professional standards for defender attorneys (Recommendation 5).**

Dealing with Excessive Caseloads

Excessive caseloads are of concern because they are inherently destructive of constitutional and professional standards: they promote inefficiency, ineffective representation and create untenable conditions that adversely affect employee retention. They may also adversely affect other criminal justice entities (e.g., by contributing to delay). Therefore, national and state standards for indigent defense have addressed caseload issues in the most serious terms.

Our recommendations for dealing with this issue include:

- **Maricopa County and the MCPD should incorporate administrative mechanisms into their budget process that would avoid excessive MCPD caseloads. This should include the development of appropriate standards and procedures, determination of a reasonable caseload, and defender administrative authority not to accept a higher caseload (Recommendation 1).**
- **The MCPD should not continue to require its attorneys to maintain caseloads in excess of Arizona maximum caseload standards, if in the professional judgment of the Public Defender such caseloads are actually excessive. It is imperative, however, that—to the extent circumstances permit—prior to seeking to withdraw from an excessive caseload, the Public Defender determine whether modifying departmental organization and priorities, reallocating available resources, and seeking additional resources and systemic changes would reduce his attorneys’**

caseloads to appropriate, professional levels. If it becomes necessary, the MCPD should seek external assistance in establishing a mechanism to deal with excessive caseload, including the development of appropriate standards, procedures and cost-effective remedies, prior to these problems rising to crisis proportions (Recommendation 2).

Reducing Delay in the System

One impetus for this study was case processing delay. The system has struggled with this problem for many years and has made only limited progress in resolving it, although recent reform efforts seem to be having a more positive impact. We believe that the local legal culture is at least partly at fault for the lack of progress in reducing delay. That is, the system has adopted a set of values and beliefs that frustrate delay reduction. A substantial contributor to delay is the lack of systemic front-loading; i.e., the long early period in the life of a case without any substantive work on it by the entire court system. Case processing practices also contribute to delay, in particular practices relating to trial readiness on the first trial setting. Most participants do not expect to go to trial on the first trial setting and so are rarely prepared to do so. Continuance requests are granted routinely to both sides, with the result that many cases do not plead out early and may not go to trial until the second or later trial setting.

Some of our recommendations in Exhibit VII-1 are aimed at achieving an earlier, yet fair disposition of criminal cases. Some of the changes we recommend are largely internal to one or another of the agencies in the criminal justice system, but we believe all of them will ultimately improve the system's ability to achieve compliance with Rule 8. Other changes we recommend are more systemic and have potential impacts beyond their effect on case processing delay.

There are a few recommendations that we believe deserve special attention here because of their potential impact on delay.

- **The system needs to create an effective way to disseminate accurate, complete discovery promptly (Recommendation 31b).**

- **The system should consider assigning cases to a Superior Court judge when the initial complaint is filed in the Clerk's Office or as soon as practical thereafter (Recommendation 31e).**
- **Early appointment of a public defender to a case should become standard practice (Recommendation 31i).**
- **If authorized, the County Attorney's Office (MCAO) and the court should promote the direct filing of informations without preliminary hearings. If not currently authorized, the MACO should define and follow more limited criteria for presenting cases at preliminary hearing in the Justice Courts and use the grand jury more extensively (Recommendation 32).**
- **The system should immediately create an interim case management system that presents at least the minimum data needed to monitor and manage cases (Recommendation 37).**

Earlier assignment of counsel should result in earlier intervention, fewer gaps in case processing (i.e., the time during which the cases are dormant), and more expeditious case resolution. In the current back-loaded system, the trial attorney typically is not assigned until arraignment, weeks after arrest. When defender attorneys are assigned to individual judges, early appointment and assignment of counsel can only be effective if the cases have been assigned to a specific judge and given a case number.

The basic alternatives to preliminary hearings are direct filing or presentation to the grand jury. In either option, the prosecution has an opportunity to evaluate its witnesses' credibility. States such as Florida have used direct filing for most of this century. The common practice in those jurisdictions is for the prosecutor to take sworn testimony from the victim and/or the investigating detective.

Office Structure and Management

This report offers one alternative organizational model as a point of discussion; a model the MCPD could use to generate additional ideas about office structure. Whatever structure is defined, it should accommodate some of the other recommendations we make for improving internal operations. Among them are:

- **The MCPD needs to conduct a thorough study of its entire operations, with particular focus on its support services, as the office moves from a back-end loaded to a front-end loaded organization (Recommendation 9).**
- **The MCPD should improve the amount and quality of its office space and the other conditions under which its lawyers and staff meet with clients. It should also design its space to improve the efficiency and effectiveness of office operations (Recommendation 10).**
- **The MCPD should define a career development path for its attorneys. Case assignments should be linked to that career path (Recommendation 14).**
- **The MCPD should increase its attorney-support staff ratio to 1:1. (Recommendation 17).**
- **The MCPD should hire new staff in different functional areas (Recommendation 18).**
- **The MCPD should review its office-wide training plan to promote staff development (Recommendation 20).**
- **The MCPD should employ or have immediate and continuous access to sufficient numbers of technical personnel familiar with its computers, departmental functions, and procedures in order to re-engineer its information system and automate that system (Recommendation 24).**
- **The MCPD should re-engineer its workflow and refine all of its current office procedures in preparation for automation (Recommendation 25).**

Justice System Communication and Collaboration

The Maricopa County justice system has a long history of inter-agency discussion and joint efforts to resolve justice system problems. For the last ten years, the Maricopa County Justice Coordinating Committee (McJustice) has been the major forum for those discussions. There has been some recent concern that McJustice has not operated

collaboratively. However, we believe it could be the forum for information sharing and policy making that needs to occur to improve the criminal justice system.

One of the major conclusions from our interviews with justice system practitioners is that the quality of case data and sharing of the data need to be improved. There is disagreement among key justice system leaders regarding the accuracy of existing data, even though the court's data system has been audited and approved by the State Court Administrator's Office. For many practitioners in the system, however, the data to fully manage the cases are not there. Even if they were there, it is not clear they would be used because of the disagreements about data accuracy.

Among our recommendations in this area are the following:

- **All Maricopa County justice system agencies should be involved in identifying issues and reaching decisions having significant system-wide impact in a collaborative and participatory manner (Recommendation 29).**
- **The Maricopa County criminal justice system should immediately create an interim case management system that presents at least the minimum data needed to monitor and manage cases. In the long term, the County should promote the development of a cooperative, integrated, automated information system which would permit the governmental entities within the criminal justice system to share appropriate information (such as the procedural status of individual cases) on a real-time basis (Recommendation 37).**

Budgeting

Based on our review, we believe there is a possible imbalance of funding in the system among criminal justice agencies. Our belief is driven by the statistics about court operations and funding from 1989 through 1998. For example, the number of judicial officers increased 21 percent, court support staff increased 51 percent, and the court's budget increased 34 percent during that time period.

We were unable to gather adequate statistics about increases in the MCPD's and MCAO's budgets for the same time period, but our impression is that the staffing and

budget increases in those agencies have not been comparable to the increases given to the court. For this reason, we make the following recommendation:

- **Maricopa County should work toward developing a unified budget process for the criminal justice system within a reasonable time, perhaps two to three years. Budget allocations should be made based upon an impact analysis to ensure sufficient and balanced funding to all system participants, including indigent defense (Recommendation 39).**

NEXT STEPS

This report contains numerous ideas for reform in the MCPD and in the criminal justice system generally. Yet, those recommendations reflect only a portion of our ideas for improvement. Many other ideas we shared directly with the MCPD and already have worked with that office to implement some of them. We also have provided information to the MCPD about how to proceed in implementing other change efforts, such as a case counting and weighting study that would, in our opinion, measure workload more appropriately and allow the MCPD to compare its workload to the workloads of the MCAO and the courts. Thus, some efforts are already underway that should see tangible results in the near future.

We view as a positive development the Public Defender's interest in convening a management retreat to consider the improvement recommendations as a whole. We hope that retreat will be followed by development of a strategic action plan that (1) establishes some *priorities* for the MCPD, (2) outlines a considered *approach* to effecting needed changes, and (3) offers a detailed *plan* for implementing those changes (e.g., what tasks need to be completed; who will be responsible for ensuring task completion; what milestones and outcomes will be used to measure success).

Although we primarily prepared this report for the MCPD, the recommendations in it affect agencies throughout the entire criminal justice system. We therefore believe the report could be a foundation for future planning efforts by the justice system in collaboration with the County administration. The justice system has an existing policy group (McJustice) that could be the vehicle for such planning, but only if there are some changes to the group's organization and purpose.

Exhibit VII-1

RECOMMENDATIONS SUMMARY

Dealing with Excessive Caseloads

1. Maricopa County and the MCPD should incorporate administrative mechanisms into their budget process that would avoid excessive MCPD caseloads. This should include the development of appropriate standards and procedures, determination of a reasonable caseload, and defender administrative authority not to accept a higher caseload.
2. The MCPD should not continue to require its attorneys to maintain caseloads in excess of Arizona maximum caseload standards, if in the professional judgment of the Public Defender such caseloads are actually excessive. It is imperative, however, that—to the extent circumstances permit—prior to seeking to withdraw from an excessive caseload, the Public Defender determine whether modifying departmental organization and priorities, reallocating available resources, and seeking additional resources and systemic changes would reduce his attorneys’ caseloads to appropriate, professional levels. If it becomes necessary, the MCPD should seek external assistance in establishing a mechanism to deal with excessive caseload, including the development of appropriate standards, procedures and cost-effective remedies, prior to these problems rising to crisis proportions.

Case Counting and Weighting

3. Maricopa County needs to develop a uniform definition of a “case” and a case counting and weighting method applicable beyond the MCPD to at least other indigent representation agencies and preferably to the entire criminal justice system.
4. Maricopa County should develop a uniform, system-wide funding model for addressing caseload and/or workload increases.
5. The MCPD should conduct a case weighting study to establish MCPD caseload standards that reflect actual workload and the work required to meet minimum professional standards for defender attorneys.
6. The MCPD should articulate general policies or practices that affect all case categories and link each category to specific policies or practices affecting that category.

MCPD Management

7. The Management Team should reevaluate the purpose and scope of MCPD data collection. The Management Team should assign a task force to create report formats in conjunction with end-users.
8. The Management Team should continue to refine the MCPD *Practice and Procedure Manual*. Furthermore, it should periodically review the *Manual* and make recommendations for revisions consistent with the ethical and professional practice of law.

Exhibit VII-1

RECOMMENDATIONS SUMMARY

MCPD Operations

9. The MCPD needs to conduct a thorough study of its entire operations, with particular focus on its support services, as the office moves from a back-end loaded to a front-end loaded organization.
10. The MCPD should improve the amount and quality of its office space and the other conditions under which its lawyers and staff meet with clients. It should also design its space to improve the efficiency and effectiveness of office operations.
11. The MCPD should give greater emphasis to early representation of clients (i.e., during the period from arrest to arraignment).
12. The MCPD should review and evaluate the pilot project in Trial Group E, including the expansion of horizontal representation.
13. The MCPD should increase its efforts to promote a culture of professionalism, trust, and courtesy toward clients, fellow workers, judges and the general public.
14. The MCPD should define a career development path for its attorneys. Case assignments should be linked to that career path.
15. The MCPD should consider establishing a defender Resource Center within the office. The Resource Center should include an upgraded, electronic library.
16. Special actions brought by the MCPD should be handled by designated attorneys in the appellate division, rather than by the MCPD's training director.
17. The MCPD should increase its attorney-support staff ratio to 1:1.
18. The MCPD should hire new staff in different functional areas.
19. The MCPD should review and revise its personnel classification and compensation plan to bring that plan into better alignment with similar plans in client-oriented law firms.
20. The MCPD should review its office-wide training plan to promote staff development. Specifically, the MCPD should:
 - Expand the number and refine the content of its training programs;
 - Survey its clients and use the survey findings to refine its training programs;
 - Consider establishing linkages with corporations in Maricopa County to access private sector training expertise; and
 Seek funding to allow more staff to attend professional meetings and workshops inside and outside of Arizona.

Exhibit VII-1
RECOMMENDATIONS SUMMARY

21. In developing a training plan for management and supervisory personnel, the MCPD should consider establishing linkages with:
 - Private-sector corporations headquartered in Maricopa County that have management training expertise, and
 - Out-of-state public defender offices that have recognized, well-developed management capabilities.
22. The MCPD as an organization and through its staff should continue to expand its participation in state and national organizations concerned with improving the delivery of defender services.
23. The MCPD should expand its written, office-wide automation plan to include a system-wide focus.
24. The MCPD should employ or have immediate and continuous access to sufficient numbers of technical personnel familiar with its computers, departmental functions, and procedures in order to reengineer its information system and automate that system.
25. The MCPD should re-engineer its workflow and refine all of its current office procedures in preparation for automation.
26. The MCPD should continue to coordinate with Maricopa County's Chief Information Officer and ensure early and meaningful participation in the development of the new criminal justice information system.
27. The MCPD should continue to take a leadership role in improving the defense function in Maricopa County, especially by continuing to (1) provide training for other criminal defense service providers, (2) improve its coordination with those providers, and (2) educate the public about its services.
28. Maricopa County should create a structure and process to assure appropriate levels of accountability and autonomy for indigent defense.

Exhibit VII-1

RECOMMENDATIONS SUMMARY

External System

29. All Maricopa County justice system agencies should be involved in identifying issues and reaching decisions having significant system-wide impact in a collaborative and participatory manner.
30. Delay reduction should be the first issue the McJustice membership addresses.
 - 30a. McJustice should make recommendations to the Arizona Supreme Court that set realistic and appropriate case disposition time standards.
 - 30b. The time standards should limit the time between events in the processing of the case to the amount of time needed to properly prepare for each event and no longer.
 - 30c. In developing the time standards, McJustice should consider shorter time standards for in-custody cases and longer time standards for out-of-custody cases.
 - 30d. McJustice should design a program to implement the case disposition time standards that is phased in over a period of time and uses pilot projects to refine implementation. The outcomes from the pilot should be monitored and evaluated.
31. All Maricopa County justice system agencies should continuously identify and seek to eliminate barriers to the fair and early disposition of criminal cases.
 - 31a. A permanent work group that is truly representative of the justice system should be established to create an effective system to disseminate accurate, complete discovery promptly.
 - 31b. The MCAO should make greater efforts to provide automatic, early and complete discovery. The MCPD should continue its efforts to secure discovery that is not forthcoming. The court must consistently and firmly enforce discovery rules.
 - 31c. Starting times for morning calendars within a quad should be staggered to reduce attorney conflicts and ending times should guarantee a minimum of five hours of trial time.
 - 31d. The MCPD and MCAO should modify their attorney assignment systems to minimize calendar conflicts.
 - 31e. Consideration should be given to assigning cases to a Superior Court judge when the initial complaint is filed in the Clerk's Office or as soon as practical thereafter.
 - 31f. Each judge should be held accountable for the disposition of all cases in the judge's division within the time standards. Similarly, all judges in each quad should be held jointly responsible for the timely disposition of all cases assigned to that quad.
 - 31g. The MCPD and the MCAO should have an informed coverage attorney to provide case information at every calendar call.
 - 31h. The MCPD and MCAO should consistently provide experienced attorneys to mentor inexperienced trial attorneys.
 - 31i. Early appointment of the Public Defender to a case should become the practice. The MCPD should have the resources necessary to permit the attorneys to interview defendants prior to or at the initial appearance hearing.

Exhibit VII-1
RECOMMENDATIONS SUMMARY

- 31j. The MCAO's charging attorneys should consult with and, in selected cases, take sworn testimony from the victim and police officer most familiar with the case prior to making a filing decision.
- 31k. After consultation with other justice system agencies, the frequency of initial appearance sessions should be studied to reduce their number and to allow for meaningful preparation and participation by the MCAO, MCPD and Pretrial Services so that the remaining hearings can become more substantial.
- 31l. The MCAO should give greater discretion to its attorneys to negotiate pleas and simplify its internal plea review process.
- 32. If authorized, the MCAO and the court should promote the direct filing of informations without preliminary hearings. If not currently authorized, the MCAO should define and follow more limited criteria for presenting cases at preliminary hearing in the Justice Courts and use the grand jury more extensively.
- 33. After careful evaluation, Maricopa County should expand its diversion opportunities for felony defendants. Even before it expands opportunities, the County should allocate additional resources to the Pretrial Services Agency.
- 34. The Clerk of Court, with the support of the court, court administration and County administration, should devise and execute a crash program to bring minute entries up to date.
- 35. The Clerk of Court should review the role of the courtroom clerk and the role of minute entries to identify whether the courtroom clerks' duties and/or minute entries should be redefined.
- 36. Once current with the minute entries, the Clerk should explore more ways to remain current. The Clerk should seek funding for a record management study which would include the current minute book entry system.
- 37. The Maricopa County criminal justice system should immediately create an interim case management system that presents at least the minimum data needed to monitor and manage cases. In the long term, the County should promote the development of a cooperative, integrated, automated information system which would permit the governmental entities within the criminal justice system to share appropriate information (such as the procedural status of individual cases) on a real-time basis.
- 38. Juror exit questionnaires should be designed and administered.
- 39. Maricopa County should work toward developing a unified budget process for the criminal justice system within a reasonable time, perhaps two to three years. Budget allocations should be made based upon an impact analysis to ensure sufficient and balanced funding to all system participants, including indigent defense.